MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017

ULT 2612 – LAW OF TORTS I

(All sections / Groups)

7th OCTOBER 2016
Reading time: 9.00 a.m. - 9.15 a.m.
(15 minutes)
Answering time: 9.15 a.m. -12.15 p.m.
(3 hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with 5 Questions only.

3. Attempt **FOUR** out of FIVE questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Muthu is a garderner at Samad's house in Puchong Perdana, Selangor. Every day, it is Muthu's job to clean up the whole area of Samad's house and also to ensure that the landscape surrounding the house is well nurtured and cared for. Both Samad and Muthu are cat lovers. Samad had a few cats in the house and it is also Muthu's responsibility to maintain their well-being. Both of them enjoyed playing with cats very much.

Two months ago, Muthu found that one of the cats was missing. While he was trying to look for the cat, he heard the cat's sound from Kamal's house, Samad's neighbour. Muthu climbed the fence and jumped into Kamal's compound. As he was trying to locate the cat, he suddenly bumped into a big vase. As a result, the vase fell down on him and cracked. His leg became so painful due to the crash so he took Kamal's shirt which was hung outside the house and tied his leg.

Kamal who was on vacation reached home and saw Muthu lying on the floor. He clenched his fist and tried to punch Muthu. However, Samad who has just reached home stopped him. Upon seeing his beloved cat at Kamal's balcony, he accused Kamal of trying to steal his cat. Kamal denied and a heated argument took place between them. Samad took a golf stick and hit Kamal. Later, he ran back home. He forgot that he has left his expensive coat on a table in Kamal's garden. Kamal just ignored the coat and did not do anything to return it to him. Samad only found out last week that the coat was damaged due to heat and rain.

Kamal has taken Samad's cat and put her in a cage. Last week, Samad asked Kamal to return his cat but Kamal refused.

Advise the parties on their claims against each other.

(Total: 25 marks)

QUESTION 2

The Australian court in Rogers v Whitaker *[1992] HCA 58* has disagreed with the principle of 'Doctor Knows Best' as enunciated in Bolam v Friern Hospital Management Committee *[1957] 2 All ER 118*. It also stressed the importance of autonomous decision making of patients. Thus, the court has the ultimate responsibility to determine whether a practice conforms to the standard of reasonable care demanded by law. More importantly, this responsibility could not be delegated to the profession.

With reference to the above proposition, discuss the current trend and standard of care in determining the liabilities of professionals in Malaysia.

(Total: 25 marks)

Continued...

QUESTION 3

Yuan is a senior manager at a multinational company, which is based in Kuala Lumpur. A few months ago, he was very busy handling three mega projects for the company simultaneously. He had to travel to Kuching, Bangkok and Beijing in order to ensure the smooth running of all the projects.

Last month, while he was on his way to the airport, he met with an accident, which was caused by Samy, a lorry driver. Consequently, his leg was cracked and his head was injured. Previously, Yuan was diagnosed with stage 2 brain cancer. Due to the accident, the cancerous cells grew faster than before. Dr Zaman advised him that he had to have a good rest for at least a week to recover. As the project in Kuching was still at the initial stage, he thought he had to be there to supervise all the workers and staff. After two days, he flew to Kuching to settle his work. As a result, his leg became swollen and Dr Zaman told him that a surgery was necessary in order to reduce his pain.

However, he refused to undergo the surgery and continued his work as usual. Last week, he fainted while he was at work. The doctor found that the brain cancer had become serious, at stage four and that his leg needs to be amputated.

Advise Yuan on his claim against Samy.

(Total: 25 marks)

QUESTION 4

Leong, a construction engineer, went to Seri Murni Highlands for a business trip during the school holiday. He brought along his wife, Mary, his 10 year old son, Jason and his 6 year old daughter, Lily. They stayed at Seri Mutiara Hotel. The next day, while inspecting at a construction site, a forklift owned by Super Duper Company fell and injured Leong.

In the meantime, his wife and children went for breakfast at the hotel. Mary slipped and fell on a wet floor of the hotel lounge and suffered injury. While the hotel staff were busy attending to Mary, Jason and Lily wandered around the hotel compound and saw the signage to "Snow World". As there was nobody at the entrance, Jason went in and tried the snow slide. He slipped off the slide and crashed against the wall. As a result, he has broken his leg.

Lily, who waited outside the Snow World tried to call others for rescue. She ran towards the hotel reception counter but she fell in a hole at the hotel pathway. Later, it was found that there was a small warning signage with the word 'Danger" beside the hole but it was thrown aside by passers-by.

Advise Leong and his family.

(Total: 25 marks)

Continued...

QUESTION 5

i) Sometimes words are defamatory by virtue of either inferences or special facts or circumstances known by the recipient or reader of the words. In other words, these words are said to be defamatory by innuendo.

Discuss the above proposition, with special reference to the categories of innuendo.

(10 marks)

ii) One of the defences available for defamation is a comment, which is honestly and fairly made. Elaborate the elements the defendant must show in order to establish this defence.

(15 marks)
(Total: 25 marks)

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